SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 436.

THE UNITED STATES, APPELLANT,

vs.

EDWIN E. MARVIN.

APPEAL FROM THE COURT OF CLAIMS.

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1 I.—*Petition. Filed October 25, 1906.*

In the Court of Claims.

EDWIN E. MARVIN
vs.
THE UNITED STATES. } No. 29845.

To the honorable judges of the Court of Claims:

Your petitioner, Edwin E. Marvin, a citizen of the United States, and a resident of Hartford, in the State of Connecticut, respectfully shows:

That from the 1st day of June, 1900, to the 1st day of April, 1906, he was clerk of the United Staes District and Circuit Courts for the district of Connecticut, duly qualified, and acted as said clerk.

That your petitioner presented to the accounting officers of the Treasury for payment his accounts for services as said clerk from the 1st day of June, 1900, to the 1st day of April, 1906, sworn to

2 and duly approved by the court, as required by the act of February 22, 1875, 18 Stat. L., 333; that in the settlement of said accounts the accounting officers disallowed and refused payment of fees for the following services, as per Exhibit "A," herewith attached.

Petitioner claims that, in accordance with the provisions of section 828 of the Revised Statutes of the United States, he is entitled to be paid by the United States for each of the services performed by him as aforesaid, and approved and allowed by the court; and though his accounts therefor have been duly presented to the accounting officers of the Treasury for payment of said fees, and although payment of the same has been repeatedly demanded, yet no part of the same has been paid to him, nor to any one for him, nor has any part of the same been allowed to him in any way as a credit or set-off by any officer or department of the United States; but, on the contrary, allowance and payment thereof has been refused, although his accounts therefor were duly presented to and approved by said court in accordance with law.

Your petitioner further avers that no assignment or transfer of said claim, or any part thereof, has been made by him, and that he is the lawful owner thereof; that his whole compensation, if said fees were added, would not exceed the maximum compensation of $7,000 for any one year.

Wherefore your petitioner prays judgment against the defendant for $535\frac{00}{100}$.

EDWIN E. MARVIN.

By his attorneys,
LANCASTER & SMITH,
Washington, D. C.

3 EXHIBIT A.

The United States, Dr. To Edwin E. Marvin, clerk of the District and Circuit Courts of the United States for the district of Connecticut, for services rendered on behalf of the United States from June 1, 1900, to April 1, 1906, to wit:

Item 1.—For attendance on court while actually in session during the terms, with the judge presiding and judicial business actually transacted in court, as provided by sections 574, 638, and 828, Revised Statutes, and chapter 11, section 2, bankruptcy act (30 Stat. L., 545), 107 days, at $5.00 per day, disallowed per official settlements of the accounting officers of the Treasury Department, dated July 3, 1906, as follows:

Report 119648, item 1	$535.00
Total amount claimed	$535.00

4 DISTRICT OF COLUMBIA,
County of Washington, ss:

Before me, a notary public in and for the District of Columbia, personally appeared Charles C. Lancaster, who, being duly sworn, deposes and says that he is the attorney for the petitioner named in the foregoing petition, and that he is authorized by warrant of attorney, duly executed by said petitioner and filed herewith, to verify said petition, and petitioner is justly entitled to the amount therein claimed from the United States after allowing all just credits and set-offs, and that the facts therein stated are true to the best of his knowledge and belief.

CHARLES C. LANCASTER.

Subscribed and sworn to before me, this 23rd day of October, 1906.

[SEAL.] NORTON M. LITTLE,
Notary Public, D. C.

5 (Indorsed:) Court of Claims. No. . Edwin E. Marvin vs. The United States. Copy petition. Filed Oct. 25, 1906. Court of Claims.

6 II.—*Traverse. Filed April 15, 1908.*

In the Court of Claims of the United States. December term, A. D. 1907.

EDWIN E. MARVIN
vs.
THE UNITED STATES. } No. 29845.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each

and every allegation therein contained; and asks judgment that the petition be dismissed.

JOHN Q. THOMPSON,
Assistant Attorney-General.

7 III.—*Argument and submission.*

On the 15th day of April, 1908, this case was argued by Mr. C. C. Lancaster, for the claimant, and Mr. P. M. Ashford, for the defendants, and the case was thereupon submitted.

8 IV.—*Findings of fact and conclusion of law. Filed April 20, 1908.*

Court of Claims of the United States.

EDWIN E. MARVIN
vs.
THE UNITED STATES. } No. 29845.

This case having been heard by the Court of Claims the court, upon the evidence, makes the following

FINDINGS OF FACT.

I.

During the times hereinafter mentioned the claimant, Edwin E. Marvin, was clerk of the District and Circuit Courts of the United States for the District of Connecticut.

II.

For services on behalf of the United States during the period from July 1, 1900, to April 1, 1906, the claimant made up his supplemental accounts duly verified, and presented the same to the United States Court for approval in the presence of the district attorney, and orders approving the same as being just and according to law were entered of record. Said accounts were then presented to the Attorney-General and the accounting officers of the Treasury Department for payment, and the payment of the items embraced in Finding III was refused.

III.

Said items the payment of which was so refused were alleged to be for attendance on court while actually in session during the terms, or when business was transacted in court upon order of the judge, and were for 107 days at $5 per day, making $535.

The business so transacted was the reference by the clerk to
9 the referee of voluntary petitions in bankruptcy filed during the absence of the judge from the district. No written orders were received by the clerk to open the court for the purpose of making said references, or for any other purpose; the judge was not personally present, and no writs, orders or decrees were received from the judge sitting in chambers. The journal made by the claimant does not show that the court was open on any of the days for which per diems are claimed. The claimant, after learning of the decision of the Court of Claims in the Owen case (41 C. Cls. R., 69), went back in his district court journal and on the last day of every month over which his account extended interlined the days in such month upon which he had made references, merely stating them as days in which court business in bankruptcy proceedings was transacted.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that, under the Owen case (41 C. Cls. R., 69), and the Finnell case (185 U. S., 236), the claimant is entitled to a judgment for five hundred and thirty-five dollars ($535).

BY THE COURT.

10 V.—*Final judgment.*

At a Court of Claims held in the city of Washington, D. C., on the 20th day of April, A. D. 1908, judgment was ordered to be entered as follows:

The court on due consideration of the premises find for the claimant and do order, adjudge, and decree that the said Edwin E. Marvin, do have and recover of and from the United States the sum of five hundred and thirty-five dollars ($535).

BY THE COURT.

11 VI.—*Defendants' application for, and allowance of, appeal.*

From the judgment rendered in the above-entitled cause on the 20th day of April, 1908, in favor of claimant, the defendants, by their Attorney-General, on the 9th day of June, 1908, make application for, and give notice of, an appeal to the Supreme Court of the United States.

JOHN Q. THOMPSON,
Assistant Attorney-General.

Filed June 9, 1908.

Ordered, This 9th day of June, 1908, that the above application for appeal be allowed as prayed for.

STANTON J. PEELLE,
Chief Justice.

12 **VII.—*Certificate.***

Court of Claims.

EDWIN E. MARVIN
vs.
THE UNITED STATES. } No. 29845.

I, Archibald Hopkins, chief clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the judgment of the court, of the application of the defendants for, and the allowance of, an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 13th day of June, A. D. 1908.

[SEAL.]

ARCHIBALD HOPKINS,
Chief Clerk Court of Claims.

13 (Indorsement on cover:) File No., 21232. Court of Claims. Term No., 436. The United States, appellant, vs. Edwin E. Marvin. Filed June 17th, 1908. File No., 21232.

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